

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 14,945

IN THE MATTER OF:

Served July 25, 2014

WASHINGTON SHUTTLE, INC., Trading)	Case No. MP-2011-099
as SUPERSHUTTLE, WMATC No. 369)	
Investigation of Violation of)	
Commission Regulation No. 64)	

This matter is before the Commission on respondent's comments regarding certain safety records produced by respondent earlier this year in response to Order No. 13,726, issued in this proceeding on February 5, 2013.

I. BACKGROUND

This investigation was initiated on November 28, 2011, in Order No. 13,063 to review respondent's compliance with the Commission's safety regulation, Regulation No. 64. One of respondent's 10-passenger vans had been involved in a fatal crash on the Dulles Access Road on August 15, 2011. The Commission determined that the public interest warranted a comprehensive review of respondent's compliance with the FMCSRs in Title 49 of the Code of Federal Regulations (C.F.R.s) as adopted by Commission Regulation No. 64.

A comprehensive onsite safety compliance review and evaluation of respondent's records and vehicles was conducted by Consolidated Safety Services (CSS) on behalf of the Commission during the week of February 6, 2012. CSS delivered its report to WMATC on February 14, 2012. Based on the findings, conclusions, and recommendations in the report, respondent was assigned a proposed safety rating of "Unsatisfactory" on March 1, 2012,¹

The violations warranting the Unsatisfactory rating involved failure to comply with 49 C.F.R. §§:

- 391.51(b)(2) -Inquiries into drivers' motor vehicle records
- 391.51(b)(7) - Medical Examiners' Certificates
- 395.8(a) - Driver's Record of Duty Status
- 396.3(b) - Minimum Records of Maintenance and Inspection
- 396.11(a) - Driver's Vehicle Inspection Report

¹ An Unsatisfactory rating indicates that a carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard in 49 C.F.R. 385.5(a) and that a carrier is operating at an unacceptable level of compliance.

Washington Shuttle promptly corrected these violations, and its safety rating was upgraded by letter to "Conditional" on April 17, 2012, and by order to "Satisfactory" on February 5, 2013.²

Ultimately, the Commission decided that it would monitor respondent's safety compliance as recommended by CSS. To that end, beginning with the 3-month period ending March 31, 2013, and ending with the 3-month period ending December 31, 2013, respondent was directed to file a quarterly list of drivers and vehicles employed during each period, which Commission staff would use in sampling the critical record types found missing during the February 2012 review: driver motor vehicle records, medical examiner certificates, hours-of-service records, vehicle maintenance records, and driver vehicle inspection reports.

II. FOURTH QUARTER RESULTS

The records produced by respondent for the first three quarters of 2013 raise no substantial issues. The documents produced for the fourth quarter, however, appear to show a violation of 49 C.F.R. § 395.8(a) - Driver's Record of Duty Status, which provides that: "[e]xcept for a private motor carrier of passengers (nonbusiness), every motor carrier shall require every driver used by the motor carrier to record his/her duty status for each 24 hour period"

Among the fourth-quarter documents produced by respondent are duty status records ostensibly for driver Peter Annan covering the period beginning September 30, 2013, and ending January 5, 2014. According to these records, Mr. Annan was on duty for 70 hours over the course of eight consecutive days - a violation of 49 C.F.R. § 395.5(b)(2) - on multiple occasions in the fourth quarter of 2013. Respondent's explanation of this is as follows:

Mr. Annan was a Washington Shuttle franchisee. As you know, all Super Shuttle operators are now required to complete Record of Duty Status Form on a daily basis. Forms are submitted to the Washington Shuttle management at the end of each week. Any operator that fails to submit the previous week's Record of Duty Status Form will have their operator identification [number] disabled which, in turn, makes them unable to work until the completed form is submitted. Beginning in the week ending September 29, 2013, Mr. Annan employed a relief driver, Andrew Andoh. Mr. Andoh failed to submit his duty status form at the end of the week, and as a result, his operator identification number was made inactive. Nevertheless, Mr. Annan continued to permit Mr. Andoh to operate the van using Mr. Annan's operator identification number and recording hours of service for both operators on a single duty status

² WMATC Order No. 13,726 at 3-4.

sheet. In essence, Mr. Andoh was driving shifts by using Mr. Annan's number.

III. PRELIMINARY FINDINGS

For this situation to have persisted for some 14 weeks can only be the result of a failure to adequately monitor driver hours-of-duty records. If respondent is to be believed, management thought that the Peter Annan duty records were being submitted daily for him alone. And yet, his apparent repeated violation of the 70 hours-in-eight-days rule did not register with management for more than three months.

Respondent has since "instituted several additional levels of review for weekly hours submitted." And it appears that the franchise of Peter Annan has been terminated. Still, permitting such conduct to occur without consequence would send the wrong message to respondent and other WMATC carriers.

IV. ORDER TO SHOW CAUSE

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.³

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁴ The term "willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard whether or not one has the right so to act.⁵

Employee negligence is no defense.⁶ "To hold carriers not liable for penalties where the violations . . . are due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of" the statute.⁷

Respondent shall have 30 days to show cause why the Commission should not assess a civil forfeiture against respondent for violating 49 C.F.R. § 395.8.

³ Compact, tit. II, art. XIII, § 6(f).

⁴ *In re Veolia Transp. On Demand, Inc., & Washington Shuttle, Inc., t/a SuperShuttle*, No. AP-07-006, Order No. 11,580 at 6 (Sept. 18, 2008).

⁵ *Id.* at 6.

⁶ *In re Exec. Tech. Solutions, LLC*, No. MP-10-090, Order No. 13,044 at 4 (Nov. 8, 2011).

⁷ *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 244, 58 S. Ct. 533, 535 (1938).

THEREFORE, IT IS ORDERED:

1. That within 30 days, respondent shall show cause why the Commission should not assess a civil forfeiture against respondent for knowingly and willfully violating 49 C.F.R. § 395.8, as adopted by WMATC Regulation No. 64, between October 1, 2013, and December 31, 2013.

2. That respondent may submit within 15 days from the date of this order a written request for oral hearing, specifying the grounds for the request, describing the evidence to be adduced, and explaining why such evidence cannot be adduced without an oral hearing.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER, HOLCOMB, AND BROWN:

A handwritten signature in black ink, appearing to read 'W. S. Morrow, Jr.', is positioned above the printed name.

William S. Morrow, Jr.
Executive Director